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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of MARTHA BURGEE and  
JOHN G. BURGEE.

B172636

(Los Angeles County  
Super. Ct. No. BD360802)

MARTHA BURGEE,

Respondent,

v.

JOHN G. BURGEE,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,  
John W. Ouderkirk, Judge. Affirmed.

John G. Burgee, in pro. per., for Appellant.

Martha Burgee, in pro. per., for Respondent.

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This is a husband's appeal from an order fixing his support obligations. We reject his claim that the amount of support is "unrelated to any evidence" and affirm the order.

## **FACTS**

Martha and John Burgee were married in 1985, and they thereafter had three children, Laura, Kevin, and Brendan, now 18, 15, and 13. During the course of their 16-year marriage, Martha raised the children and never worked full time outside the home; John worked as a lawyer and earned the income that paid for their home (now worth about \$1.8 million), private schools for the children, vacations, and a yacht club membership.<sup>1</sup> In December 2001, Martha filed a petition to dissolve the marriage.

### **A.**

In April 2003, Martha applied for child and spousal support, attorney and accountant fees, and injunctive relief. In her supporting papers, she explained that she had completed her graduate studies and had been working since August 2002 as a school counselor, earning about \$4,000 per month. "[D]espite the acrimony between the parties," she continued to live in the family home because she was financially unable to move.

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<sup>1</sup> John initially worked as an associate for a number of law firms, then (in 1995) co-founded the firm of Burgee & Abramoff, P.C.

According to Martha's declaration (and John has never suggested otherwise), she was throughout the marriage kept "in the dark" regarding the couple's finances, but she did know (from John's undated handwritten budget) that the family's monthly expenses were about \$10,000. After Martha initiated the dissolution proceedings, John claimed he had no money left over after he paid his business expenses, and he stopped all support payments and health insurance coverage once Martha started working full time. Martha had to borrow money from her mother to pay the family's expenses and her attorney's fees. By early 2003, John had (in violation of the automatic restraining orders in effect since the beginning of these proceedings) allowed the life insurance policies to lapse and cashed out his retirement accounts. (Fam. Code, § 2040, subd. (a)(2), (3).) John also tried to block all discovery about his income and refused to provide any tax returns to Martha's lawyer.

For this reason, Martha's application was accompanied by a declaration from an experienced "legal search consultant" (Randy Beckwith) who opined, based on John's credentials (a Yale undergraduate degree and USC law degree), experience, type of practice, and current market conditions, that John could earn from \$175,000 to \$400,000 per year. Using Beckwith's opinion, Martha's lawyer submitted Dissomaster calculations based on John's income at three levels: (1) \$400,000 (for combined child and spousal support payments of \$10,235 per month), (2) \$250,000 (\$6,059 per month), and (3) \$175,000 (\$3,872 per month).

### **B.**

John (in *propria persona*) objected to Beckwith's declaration, filed his own declarations, and asked for support and for attorney's fees so he could "at least

consult a family law attorney." He estimated his gross monthly income at about \$4,000, and claimed his law practice "failed to generate significant income." As a result, he said, he and Martha "incurred substantial debt in order to meet the shortfall" and had depleted their savings. He said the \$10,000 budget no longer applied, that the couple's home belonged to his mother, and claimed that instead of paying a \$6,000 monthly mortgage payment, the couple paid a "significantly" lesser amount as "rent." (Martha concedes that title to the house is held in the name of John's mother but claims that was because she helped with the financing.) John said they had not been sticking to their budget for some time, and that they owed \$70,000 in back rent.<sup>2</sup>

John said the family had lived beyond its means but that it was not then living an extravagant lifestyle. He said their cars were old, and that they had dropped the yacht club membership and cut back in other ways. He said Martha had agreed to let the life insurance lapse and to change the health insurance to one she could obtain for less money through her employer.

### C.

In reply, Martha asked the court to strike John's requests because he had "refused to produce documents and financial information on the very issues which he raise[d] . . . , including his own income," and because motions to compel discovery were pending. John's discovery responses, such as they were, confirmed that he had objected to all discovery of all financial information

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<sup>2</sup> John's \$10,000 budget showed the couple's "rent" as \$3,000. At that rate, a \$70,000 shortfall would take 23 months to accumulate, which means the alleged inability to pay rent commenced in July 2001, coincidentally close to the time at which Martha filed her petition to dissolve the marriage. John offered no documentation to support his claim.

without a protective order; when Martha signed a "confidentiality stipulation and order" prepared by John, John still refused to produce any financial information. Martha also pointed out that all of the lifestyle changes occurred after she filed for dissolution.

**D.**

In June 2003, John retained a lawyer. In July, the court heard three pending discovery motions filed by Martha, granted almost all of Martha's requests to compel discovery responses, and awarded her attorney \$15,000 in sanctions (to be paid by August 6). The court set a date to hear the support issues but in the interim (beginning August 1) ordered John to pay \$1,500 per month to Martha, to pay all private school expenses for the children, and to pay \$15,000 for Martha's attorney's fees and \$10,000 for her accounting fees.

**Martha.** In late August, Martha filed supplemental declarations explaining that she and the children had been evicted by John's mother, forcing her to rent an apartment she could not afford without money from John -- and noting that John had yet to pay any of the money due under the court's July 7 order. Meanwhile, John continued to live "rent free" in the family home, and still refused to provide the further discovery responses ordered by the court.

**John.** In September, John (once again *in propria persona*) filed a supplemental declaration in which he complained about custody matters, said his business had no "excess money," and claimed he had "no ability to make any payments to Martha" or to pay her lawyer. To show his low bank balances, he attached copies of bank records from an individual account and a business account.

**Martha.** Martha responded with a declaration from her lawyer detailing John's failure to comply with the court's discovery and payment orders, explaining that John had produced only selected bank account and credit card statements but had still failed to produce the "vast majority" of financial information, and had not produced the couple's or his business tax returns for 2000, 2001, or 2002, or any information relevant to his business income or the couple's property or expenses. Meanwhile, Martha's lawyer had obtained from the IRS a copy of a 1994 tax record for the couple, which showed an adjusted gross income of about \$108,000. Based on a "modest" seven percent annual increase since 1994, Martha's lawyer estimated John's current income at about \$190,000.

Martha also submitted a declaration from her mother (Susan Monahan), explaining that during a November 2002 visit she had asked John why he did not apply for financial aid for Laura's education, and that John had said he could not qualify because he "ma[d]e too much money" -- that after paying his business expenses, car lease and insurance, he "took home" \$80,000 during 2002. He said he did not want a divorce and that if Martha pursued it, "he would see to it that it would leave both of them 'financially bankrupt.'"

**John.** John responded that Martha "wholly lie[d] to the Court about not having financial documents," claiming he had turned over "years and years of source records including bank statements, canceled checks and credit card statements . . . which support everything [he] set forth regarding income and expenses [and confirm his earnings] to be an average of \$5,000 per month." He

said it was not his intent to cause financial harm to Martha, and claimed he had told her mother that the couple could not support two households.

**E.**

At a hearing held on September 16, John claimed the tax returns for 2000, 2001, and 2002 did not exist for the couple or for his law firm (because he was "a little behind"). He said the law firm has no cash disbursement journals, general ledgers, profit and loss statements, or balance sheets, and insisted he had produced copies of the checks written by his law firm to him as the "best evidence" to show his income. Martha's lawyer described John's statements as "beyond imagination," pointing out that, if true, he would be in serious violation of the State Bar's accounting requirements (not to mention what the IRS would have to say about his failure to file tax returns), and added that John had thwarted all subpoenas issued to obtain financial information from third parties, notwithstanding Martha's consent to the confidentiality stipulation.

The court questioned John (under oath) about his billing rates and hours. John testified that he represents some clients on a contingency fee basis, and otherwise bills from \$150 to \$200 per hour. He said he spends about 25 hours per month on firm management and bills about 100 hours per month on non-contingency matters. Based on this testimony, the court estimated John's "bare minimum" income as \$15,000 per month.

On November 7, the court ordered John to pay monthly child support of \$1,324 and monthly spousal support of \$608, a total of \$1,932, retroactive to May 1, 2003, and explained that its order was based on findings (1) that Martha's monthly income was \$4,018, minus \$138 for health insurance for her and the children, minus \$75 for mandatory union dues, minus \$338 for her mandatory

retirement contribution; and (2) that John's income was, conservatively, not less than \$10,000 per month. The court ordered John to begin his payments on October 1, 2003, and to pay an additional \$250 per month until the arrearages (\$9,660 for May to September) were paid.

John appeals from the November 7 order.

### DISCUSSION

In related arguments, John contends the trial court erred in determining the amount of his income. We disagree.

First, we disregard John's arguments based on his assertion that the trial court impermissibly "imputed" income to him -- because the court did no such thing. Although Martha asked the court to impute income of at least \$175,000 per year based on her consultant's opinion, the court did not do that. Instead, the court estimated John's income based on his own testimony at the support hearing and on reasonable inferences from the evidence *in* the record and *missing from* the record. (Evid. Code, §§ 412, 413.)<sup>3</sup>

Second, as noted above, John testified that, in addition to his contingency matters, he bills 100 hours per month and charges from \$150 to

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<sup>3</sup> Evidence Code section 412 provides that if "weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust." Evidence Code section 413 provides that in "determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case."



\$200 per hour. Thus, disregarding income from the contingency matters, his testimony supports the court's conservative conclusion that John makes a "bare minimum" of \$15,000 per month. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614; Evid. Code, § 411.) As for John's estimate that more than two-thirds of his firm's income went to pay business expenses (of \$300,000 to \$350,000, he said \$220,000 to \$240,000 went to expenses), the court said the ratio was "astounding." We would say ridiculous, but the result is the same.

Third, the record is replete with evidence that John operates under his own definitions of "income" and "business expenses," pursuant to which he has the business pay many of his personal expenses (his car lease, auto insurance, and cellular phone among other things), which effectively keeps his business expenses high and his "income" low. He refused to acknowledge that checks payable to him might not be his only "income" as that word is viewed by the IRS, and he did not explain how he paid private school tuition of \$15,000 to \$25,000 in years his tax returns showed adjusted gross income in the \$30,000 range.

Fourth and finally, John's failure to provide the documents due in discovery and pursuant to the trial court's orders supports the trial court's finding that John's expense representations were "astounding," that he earned no less than \$15,000 per month, that only a third of that was required for business expenses, and that \$10,000 was available income. (Code Civ. Proc., § 2023, subd. (a)(4), (5), (6), (7); Evid. Code, §§ 412, 413; *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282-283.)

**DISPOSITION**

The order is affirmed. Martha is awarded her costs of appeal.

NOT TO BE PUBLISHED.

VOGEL, J.

We concur:

SPENCER, P.J.

ORTEGA, J.